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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,204	11/16/1999	DAVID VERCHERE	56490.000002	3995

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WASHINGTON, DC 20006-1109

EXAMINER
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POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/441,204

Applicant(s)

VERCHERE, DAVID

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10 and 20-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant overcame claim objections by amending Claims 24 and 29. All pending Claims (10 and 20-30) were examined in this non-final Office Action.

### ***Response to Arguments***

Applicant's arguments, see Remarks, filed 08 October 2003, with respect to the rejection(s) of claim(s) 10 and 20-30 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Promomart web site as the primary reference in combinations with: Call (relevant system technology), Bunn (artwork library), Lorge (online bidding), Busch (online company logo store), Business Wire (online purchasing prompted by email alerts for recurring events), and 911gifts.com (order status and historical click-through).

The examiner noticed Page 14 of the Specification is missing. It is possible this page is missing due to handling throughout the course of prosecution. The examiner, however, respectfully requests the Applicant to submit a true and verified copy of Page 14 to complete the Specification.

***Drawings***

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
  
2. New corrected drawings are required in this application because: at least Figures 1 and 3 do not meet margin requirements; and Figures 1-3 must have number, letters, and reference characters at least 0.32 cm (1/8 in) in height. Please refer to 37 CFR 1.84 regarding drawing requirements. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10 and 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: for at least these reasons, a) essential elements that define a system capable of electronically connecting the disparate elements, and b) essential elements that define a system capable of electronically processing the information.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

4. **Claims 20 and 26-30 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.**

The claims are directed to a process that does nothing more than manipulate an abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. There is no practical

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application in the technological arts. For subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts. See *In re Alappat* 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond V. Diehr*, 450 U.S. at 192, 209 USPQ at 10). A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result: i.e. the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ2d at 1452.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 5. Claims 10 and 20 are rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), in view of Lorge (PTO-892, Item: V), further in view of Bunn (PTO-892, Item: W), further in view of Call (patent number 5,913,210).**

Promomart teaches Promomart.com's web site providing a products purchasing web service for customers to acquire promotional products. Promomart teaches customers accessing an online catalog containing

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thousands of items that can be ordered to promote their businesses (Item: U, page 1). Promomart further teaches (Item: U, see pages 1-22):

- Purchasing products online for the purpose of having a company logo imprinted on the products and using the products to promote a business (see at least page 1),
- Searching for promotional products online, adding one or more selected products to a shopping cart, checking out by selecting a consultant to buy from based on locality or preferred consultant (see at least pages 1-2),
- Searching an online products catalog using a search engine: searching by category, price range, and/or production time; or by ASI number or line name; or by product name, or browsing by alphabetical categories (see pages 3-15),
- Viewing promotional product categories by clicking on an alphabetized category to gain access to web links and descriptions that showcase the consultant (i.e. retailer, distributor) (see page 16),
- Search consultants by area code, by consultant name, or internationally (see page 17),
- Adding and reviewing the contents of items in the shopping cart that includes total price for merchandise (see page 18),
- Reminding the user of important dates and consultant advertising (Ad Squeeze icon) (see page 19),

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- Advertising consultants featuring ASI number, imprinted graphics, text, pricing (see pages 16, and 20-21), and
- Providing an online Idea Store to suggest ways to run a promotion (see page 23).

Online Bidding

Promomart teaches all the above as noted under the 103(a) rejection and teach customers using the online web service to order branded promotional product to promote their businesses, but do not disclose providing a bidding module for vendors to bid on a presented order. Lorge teaches FreeMarkets Online providing a powerful tool for purchasers to find the best possible suppliers of industrial products, making suppliers compete for business, suppliers submitting bids, watching their rivals undercut their prices, and responding with lower bids. Lorge further teaches FreeMarkets Online acknowledging the bid service can be replicated for other markets (Item: V, pages 1-2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Promomart to include online bidding from suppliers as taught by Lorge, in order to provide branded promotional products buyers the same cost savings advantages afforded industrial products buyers, and thereby attract customers to the online promotional products service who are interested in saving money.



Artwork Library

Promomart and Lorge teach all the above as noted under the 103(a) rejection and teach promotional campaigns, imprinting company logos on products to promote businesses (Item: U, page 1 and 20), and communicating art charges prior to processing the order submitted in a checkout process (Item: U, page 1 and 18), but do not disclose providing an artwork library for storing a company's logo and branding artwork. Bunn teaches an online service, [www.adstogo.com](http://www.adstogo.com) that allows businesses to create their own advertising. Bunn teaches a web service designed to lower costs and reduce time in producing advertisements, users logging into the web site, creating an advertisement, building from a catalog of examples with stock photography, providing a logo to the service, and downloading the finished advertisement. Bunn further teaches charging for advertisements with or without artwork, storing the advertisement, logging back in to make changes, downloading the advertisement as required, and making payment via credit card (Item: W, pages 1-3). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Promomart and Lorge to include storing logo and artwork as taught by Bunn, in order to make the purchase of branded promotional products more cost effective, and thereby attract customers to the online commerce service.

System Technology

Promomart, Lorge, and Bunn teach all the above as noted under the 103(a) rejection and teach online product catalog searching using a search engine, but do not disclose the underlying system technology required to implement catalog search functionality. Call teaches the use of a search engine to search databases containing product information stored for online catalogs. Call teaches customers having a need for product information about available products to make informed purchasing choices, using the Internet and World Wide Web to permit manufacturers and retailers to provide customers with up-to-date product information, and providing an interface for manufacturers (Call also refers to manufacturers as vendors and suppliers) to enter product data into a database (see at least Fig. 1 (101, 107, 109,120); col. 1, line 10 through col. 3, line 45). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify Promomart, Lorge, and Bunn to disclose the underlying system technology necessary to make online catalogs useful to customers as taught by Call, in order for customers to better understand the technological advantages to the online promotional products service, and thereby encourage customers to use the online promotional products service.

- 6. Claims 21 and 23 are rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), in view of Call (patent number 5,913,210), further in view of Busch (PTO-892, Item: X).**

Promomart teaches Promomart.com's web site providing a products purchasing web service for customers to acquire promotional products. Promomart teaches customers accessing an online catalog containing thousands of items that can be ordered to promote their businesses (Item: U, page 1). Promomart further teaches (Item: U, see pages 1-22):

- Purchasing products online for the purpose of having a company logo imprinted on the products and using the products to promote a business (see at least page 1),
- Searching for promotional products online, adding one or more selected products to a shopping cart, checking out by selecting a consultant to buy from based on locality or preferred consultant (see at least pages 1-2),
- Searching an online products catalog using a search engine: searching by category, price range, and/or production time; or by ASI number or line name; or by product name, or browsing by alphabetical categories (see pages 3-15),
- Viewing promotional product categories by clicking on an alphabetized category to gain access to web links and

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descriptions that showcase the consultant (i.e. retailer, distributor) (see page 16),

- Search consultants by area code, by consultant name, or internationally (see page 17),
- Adding and reviewing the contents of items in the shopping cart that includes total price for merchandise (see page 18),
- Reminding the user of important dates and consultant advertising (Ad Squeeze icon) (see page 19),
- Advertising consultants featuring ASI number, imprinted graphics, text, pricing (see pages 16, and 20-21), and
- Providing an online Idea Store to suggest ways to run a promotion (see page 23).

Promomart teaches all the above as noted under the 103(a) rejection and teach online product catalog searching using a search engine, but do not disclose the underlying system technology required to implement catalog search functionality. Call teaches the use of a search engine to search databases containing product information stored for online catalogs. Call teaches customers having a need for product information about available products to make informed purchasing choices, using the Internet and World Wide Web to permit manufacturers and retailers to provide customers with up-to-date product information, and providing an interface for manufacturers (Call also refers to manufacturers as vendors

and suppliers) to enter product data into a database (see at least Fig. 1 (101, 107, 109,120); col. 1, line 10 through col. 3, line 45). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to disclose the underlying system technology necessary to make online catalogs useful to customers as taught by Call, in order for customers to better understand the technological advantages to the online promotional products service, and thereby encourage customers to use the online promotional products service.

Promomart and Call teach all the above as noted under the 103(a) rejection and teach access to promotional products and resellers supplying promotional products, but do not disclose an online company logo store for displaying products selected by the reseller for resale to a group of customers associated with a company. Busch teaches the use of intranets, the Internet and World Wide Web to improve communications with employees while reducing its reliance on paper. Busch teaches the Williams Companies offering a variety of online services including an online company store where Williams' workers can order T-shirts, pens and mugs with the Williams logo (Item: X, see at least pages 1-2).

Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify Promomart and Call to implement a online company store for logo products as taught by Busch, in order to allow retailers to sell customers associated with a company to purchase promotional items through the online promotional products service.

- 7. Claims 22 and 24 are rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), Call (patent number 5,913,210), and Busch (PTO-892, Item: X), as applied to Claim 21, further in view of Business Wire (PTO-892, Item: UU), further in view of 911gifts.com (PTO-892, Item: VV).**

Promomart, Call, and Busch teach all the above as noted under the 103(a) rejection and teach a calendar feature to remind customers of significant recurring events applicable to purchasing branded promotional products (Item: U, page 19), but do not disclose enabling one or more customers to schedule reminders for a recurring event related to ordering promotional products. Business Wire teaches a leading one-stop online gift shop where customers can enter information pertaining to a recurring event and subsequently receive an email reminder (Item: UU, pages 1-3). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Promomart, Call, and Busch to provide an a reminder service as taught by Business Wire, in order to encourage customers to purchase branded promotional products from the online service.

Promomart, Call, Busch, and Business Wire teach all the above as noted under the 103(a) rejection and teach 911gifts.com providing an event reminder services, and further teach using historical click-through and conversion to assess the success of the 911gifts.com site, but do not

disclose order status. 911gifts.com teaches customers checking order status online (Item: VV, see at least page 4). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Promomart, Call, Busch, and Business Wire to include order status as taught by 911gifts.com, in order to keep online customers up-to-date on promotional product purchases, and thereby attract customers to the online promotional products service.

- 8. Claim 25 is rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), Call (patent number 5,913,210), and Busch (PTO-892, Item: X), as applied to Claim 21, further in view of Lorge (PTO-892, Item: V).**

Promomart, Call, and Busch teach all the above as noted under the 103(a) rejection and teach customers using the online web service to order branded promotional product to promote their businesses, but do not disclose providing a bidding module for vendors to bid on a presented order. Lorge teaches FreeMarkets Online providing a powerful tool for purchasers to find the best possible suppliers of industrial products, making suppliers compete for business, suppliers submitting bids, watching their rivals undercut their prices, and responding with lower bids. Lorge further teaches FreeMarkets Online acknowledging the bid service can be replicated for other markets. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the

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method of Promomart, Call, and Busch to include online bidding from suppliers as taught by Lorge, in order to provide branded promotional products buyers the same cost savings advantages afforded industrial products buyers, and thereby attract customers to the online promotional products service who are interested in saving money.

**9. Claims 26 and 28 are rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), in view of Busch (PTO-892, Item: X).**

Promomart teaches Promomart.com's web site providing a products purchasing web service for customers to acquire promotional products. Promomart teaches customers accessing an online catalog containing thousands of items users can order to promote their businesses (Item: U, page 1). Promomart further teaches (Item: U, see pages 1-22):

- Purchasing products online for the purpose of having a company logo imprinted on the products and using the products to promote a business (see at least page 1).
- Searching for promotional products online, adding one or more selected products to a shopping cart, checking out by selecting a consultant to buy from based on locality or preferred consultant (see at least pages 1-2),
- Searching an online products catalog using a search engine: searching by category, price range, and/or production time; or



by ASI number or line name; or by product name, or browsing by alphabetical categories (see pages 3-15),

- Viewing promotional product categories by clicking on an alphabetized category to gain access to web links and descriptions that showcase the consultant (i.e. retailer, distributor) (see page 16),
- Search consultants by area code, by consultant name, or internationally (see page 17),
- Adding and reviewing the contents of items in the shopping cart that includes total price for merchandise (see page 18),
- Reminding the user of important dates and consultant advertising (Ad Squeeze icon) (see page 19),
- Advertising consultants featuring ASI number, imprinted graphics, text, pricing (see pages 16, and 20-21), and
- Providing an online Idea Store to suggest ways to run a promotion (see page 23).

Promomart teaches all the above as noted under the 103(a) rejection and teaches searching an online branded promotional product catalog using pricing data as a search criteria (Item: U, see at least pages 5), displaying branded promotional products featuring detailed pricing information, specific product information, and physical placement of the imprinted information having previously been stored (Item: U, see at least

page 20), but does not disclose an online company logo store for displaying products selected by the reseller for resale to a group of customers associated with a company. Busch teaches the use of intranets, the Internet and World Wide Web to improve communications with employees while reducing its reliance on paper. Busch teaches the Williams Companies offering a variety of online services including an online company store where Williams' workers can order T-shirts, pens and mugs with the Williams logo (Item: X, see at least pages 1-2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify Promomart to implement a online company store for logo products as taught by Busch, in order to allow retailers to sell customers associated with a company to purchase promotional items through the online promotional products service.

- 10. Claims 27 and 29 are rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), and Busch (PTO-892, Item: X), as applied to Claim 26, further in view of Business Wire (PTO-892, Item: UU), further in view of 911gifts.com (PTO-892, Item: VV).**

Promomart and Busch teach all the above as noted under the 103(a) rejection and teach a calendar feature to remind customers of significant recurring events applicable to purchasing branded promotional products (Item: U, page 19), but do not disclose enabling one or more customers to

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schedule reminders for a recurring event related to ordering promotional products. Business Wire teaches a leading one-stop online gift shop where customers can enter information pertaining to a recurring event and subsequently receive an email reminder (Item: UU, pages 1-3).

Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Promomart and Busch to provide an a reminder service as taught by Business Wire, in order to encourage customers to purchase branded promotional products from the online service.

Promomart, Busch, and Business Wire teach all the above as noted under the 103(a) rejection and teach 911gifts.com providing an event reminder services, and further teach using historical click-through and conversion to assess the success of the 911gifts.com site, but do not disclose order status. 911gifts.com teaches customers checking order status online (Item: VV, see at least page 4). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Promomart, Busch, and Business Wire to include order status as taught by 911gifts.com, in order to keep online customers up-to-date on promotional product purchases, and thereby attract customers to the online promotional products service.

**11. Claim 30 is rejected under 35 USC 103(a) as being unpatentable over Promomart (PTO-892, Item: U), and Busch (PTO-892, Item: X), as applied to Claim 26, further in view of Lorge (PTO-892, Item: V).**

Promomart and Busch teach all the above as noted under the 103(a) rejection and teach customers using the online web service to order branded promotional products to promote their businesses, but do not disclose providing a bidding module for vendors to bid on a presented order. Lorge teaches FreeMarkets Online providing a powerful tool for purchasers to find the best possible suppliers of industrial products, making suppliers compete for business, suppliers submitting bids, watching their rivals undercut their prices, and responding with lower bids. Lorge further teaches FreeMarkets Online acknowledging the bid service can be replicated for other markets (Item: V, pages 1-2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Promomart and Busch to include online bidding from suppliers as taught by Lorge, in order to provide branded promotional products buyers the same cost savings advantages afforded industrial products buyers, and thereby attract customers to the online promotional products service who are interested in saving money.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Vincent Millin** can be reached on 703-308-1065.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

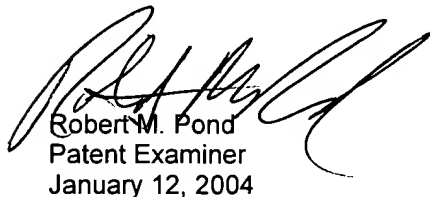
***Washington D.C. 20231***

or faxed to:

**703-872-9306** (Official communications; including After Final communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451

Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

  
Robert M. Pond  
Patent Examiner  
January 12, 2004